Bachcha Singh and ors. Vs. Gopal Singh and ors.

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Court : Allahabad

Decided On : Jan-23-1952

Reported in : AIR1953All236

Judge : Beg, J.

Acts : Limitation Act, 1908 - Schedule - Articles 142 and 144; Tenancy Law; Uttar Pradesh Tenancy Act, 1939 - Sections 94, 180(2) and 244

Appeal No. : Second Rent Appeal No. 34 of 1945

Appellant : Bachcha Singh and ors.

Respondent : Gopal Singh and ors.

Advocate for Def. : K.N. Tandon, Adv.

Advocate for Pet/Ap. : Baldeo Sahai Srivastava and ;Nand Lal Varma, Advs.

Disposition : Appeal dimissed

Judgement :

Beg, J.

1. This is a second rent appeal arising out of a suit for ejectment and damages filed under Section 180, U. P. Tenancy Act. Subsequent to the filing of the suit the plaintiffs amended their plaint by adding an alternative prayer that in case the

defendants were found to have acquired tenancy rights under Section 180, Sub-clause (2), U. P. Tenancy Act, the Court might assess rent on the defendants under Section 94, U. P. Tenancy Act. The plaintiffs' suit related to three plots situate in village Purab Patti, district Pratapgarh.

2. The suit was contested by the defendants mainly on the ground that they had become the proprietors of the disputed property by adverse possession. As the case raised a question of proprietary title, the revenue Court in which the suit was filed referred the question of proprietary title to the Munsif. The civil Court came to the conclusion that the defendants had not acquired proprietary title by adverse possession.

3. The revenue Court adopted the finding of the civil Court so far as the question of proprietary title was concerned, but it held that the suit for possession by the plaintiffs was barred by time, and the defendants had acquired tenancy rights as a result of long possession under Section 180, Sub-clause (2), U. P. Tenancy Act. The Court accordingly assessed rent on the plots in dispute. Treating the defendants as hereditary tenants, it gave a decree to the plaintiffs for Rs. 43/7/- as arrears of rent for the past three years.

4. Dissatisfied with the judgment of the trial Court the defendants went in appeal and the learned Civil Judge dismissed the appeal of the defendants and upheld the findings of the trial Court.

5. The defendants have now come in second appeal against the said judgment.

6. The main argument advanced by the learned counsel appearing for the appellants in this Court is that the defendants had become proprietors of the property in dispute by adverse possession. In support of his argument he has relied on two litigations that took place between the predecessors-in-interest of the parties. The first litigation was in the year 1899. The defendants have not filed the plaint of that case. They have only filed Ex. A. 3 which is the judgment in a suit under Section 127, Oudh Rent Act This suit was filed by the ancestor of the plaintiffs-respondents, named Pirthipal Singh, against one Ram Adhin, ancestor of the present defendants-appellants. The judgment shows that this suit was

dismissed on the ground that Section 127 was inapplicable to the case. The learned counsel for the defendants strenuously argued that in this case the defendants' ancestor had set up his title as proprietor of the plots in suit.

I have gone through the entire judgment and I find that nowhere in the body of the judgment it is clearly recited that the defendants' ancestor set up his title as owner of the property in dispute. In the opening para of the judgment the Court has recited the fact that the property was sold by the ancestor of the defendants in the present suit in favour of the plaintiff of that suit, that this land was the sir land of the vendor and had remained in his possession as sir land. The fact that the property was sold by the ancestor of the defendants to the present suit in favour of the ancestor of the plaintiffs on 10-1-1877 is admitted. This recital of fact in the judgment does not clearly indicate that the defendant in that case set up a plea of proprietary title. In any case if the defendants wanted to rely on this argument they should have filed a copy of the plaint of that case which would have clarified the position. Unfortunately they have not done so and the failure to file the plaint of that case, in the absence of any explanation for the same, must lead to a presumption against the defendants.

7. The second litigation relied on by the defendants took place about, the year 1902. It would appear that the ancestor of the plaintiffs gave a notice of ejectment to the ancestor of the defendants and the suit was filed by Rant Adhin Singh, predecessor-in-interest of the defendants to contest this notice of ejectment. The plaint of this suit is Ex. A5. It is dated 9-12-1902. I have carefully gone through the entire plaint and I fail to find any assertion of proprietary title anywhere in the body of this plaint. The judgment of the case is ex. A9. It is dated 18-3-1903. It would appear that the Court decreed the suit for cancelling the notice of ejectment on the ground that the plaintiff possessed some rights higher than that of an ordinary tenant and he was not liable to ejectment by notice. This is the entire evidence of the second litigation. There is, therefore, nothing in the documentary evidence of the two cases filed by the defendants to indicate that they had definitely and clearly set up their proprietary title against the plaintiffs at any stage.

8. The next set of documents to which reference has been made in the case is : Ex. A-11, Khasra of the year 1297 F.; A-12, Khasra of the second Settlement; Ex. A14, Khetauni of the 3rd Settlement; Exs. A15, A16 and A17, Khetaunis of the year 1334 F. In all these documents the defendants are recorded as tenants 'bila tasfia'. The learned counsel for the appellants has argued that the entry as 'bila tasfia' tenants supports his case of adverse possession as owners. I am unable to see any force in this argument. The entry records the defendants as tenants and the fact that they are shown as 'bila tasfia' merely indicates that the rent was not settled. It certainly does not indicate that they were in possession as owners by adverse possession, nor does it indicate that the persons who were entered therein were setting up their title as proprietors. On the other hand I am of opinion that there is a presumption under the Revenue Act that these entries are correct and they rather point to the conclusion that the defendants were either tenants or were prescribing for tenancy rights.

The important point that has to be borne in mind in this connection is the fact that the property in dispute was in the nature of cultivatory plots and the considerations that apply to non-agricultural or abadi plots or plots in cities would not apply to such a property. Unless, therefore, there is a very clear assertion of hostile title as owner the mere act of possession however long would only lead to the presumption of adverse possession as tenant and not as owner.

9. The learned counsel for the appellants has relied on -- 'Sheoraj Narain v. Jagannath Prasad', 8 Oudh W N 854. This case does not seem to support him at all, as it was held in that case that the entry in papers as 'Kashtkar bila tasfia' points to the conclusion that the defendant was a tenant. He has also relied on -- 'Krishnapal Singh v. Rameshwar Bakhsh Singh', 8 Oudh W N 849. This is also inapplicable to the facts of the present case, as in that case the defendant had been asserting his own title and denying the title of the plaintiff. There is no such assertion in this case. He has also cited -- 'Indar Gir v. Special Manager, Court of Wards, Balrampur Estate', 8 Oudh WN 1275 and -- 'Srishchandra Nandy v. Baijnath Jugal Kishore, Firm', 1935 Oudh W N 252 (PC) in support of his argument that an open visible and continuous possession of property for a long period leads to a presumption of adverse possession.

Both these cases are clearly distinguishable on the ground that the property in dispute in those cases did not consist of cultivatory plots at all. He has also cited -- 'Nannhey Khan v. Mt. Gomti AIR 1949 All 189 for the proposition that long possession extending over fifty years is presumed to be adverse. This case again is inapplicable to the facts of the present case as the property in dispute was not a cultivatory plot. The main question in the present case is not whether the defendants were prescribing at all, but what was the quality of title for which they were prescribing. He has also referred to -- 'Saltanat Bahadur Khan v. Gaya Bakhsh Singly, 1937 Oudh W N 625. That case has no application to the present case as in that case the defendants who asserted adverse possession had been transferring property by mortgage and asserting a hostile proprietary title. There is no such assertion in the present case.

10. The learned counsel for the respondents has invited my attention to -- 'Mt. Ram Piari v. Nawab Singh : AIR1950 All496 in support of the proposition that where a person is in possession by cultivating a plot of land in an agricultural area and there is nothing to show that he even claimed a proprietary title in the plot, the presumption is that he is prescribing for a tenancy right and not for a proprietary title although there is no contract of tenancy between him and the owner and although no rent is settled. The facts of the present case are closely analogous to the facts of that case and to my mind the ruling clearly supports the contention advanced bv him. He has also cited -- 'Bhagwan Bux Singh v. Ganesh Bux Singh', 1937 Oudh W N 1157 and -- 'Lalta Parshad v. Harnam Singh AIR 1929 Oudh 370 in support of the proposition that the entry of the defendants as tenants 'bila tasfia' in village papers is inconsistent with their possession being adverse. These rulings support the plaintiffs' case and in view of the law laid down therein the Khetaunis and the Khasra produced in this case go against the defendants' plea of adverse possession as owners.

11. After considering the entire evidence produced by thy parties and the law referred to by the learned counsel of the parties, I have come to the conclusion that the findings arrived at by the Courts below are correct and cannot be disturbed at this stage.

12. The second argument of the learned counsel for the appellants is that Section 180 is not applicable to the facts ot the present case. This point was not taken in the grounds of appeal in the Court below. It was not argued before the lower Court. It is not taken as a ground of appeal in this Court. I do not think that the appellants should be allowed to raise it at this stage. It raises questions which would require scrutiny into evidence and open up a new and an unexplored avenue of facts which have not been enquired into by any of the Courts below. It is not a pure question of law patent on the face of the record. I am of opinion that this point should not be entertained at this stage and it is not necessary for me to go into it.

13. The third argument advanced on behalf of the appellants is that it was not open to the trial Court to assess rent under Section 94, U. P. Tenancy Act while giving a declaration under Section 180, Sub-clause (2), U. P. Tenancy Act to the effect that the defendants have become hereditary tenants of the plots in dispute. To my mind Section 244, U. P. Tenancy Act provides a sufficient answer to this argument. There is no bar to the procedure adopted by the trial Court. A contrary view would load to a multiplicity of proceedings the avoidance of which was the very purpose of the said section. I am of opinion that the trial Court acted rightly in adopting this procedure. The learned counsel for the appellants has cited -- 'Deputy Commr., Partabgarh v. Udai Pratap Singh', 1949 R. D. 83 and -- 'Ramdei Kuer v. Lachman', 1943 R. D. 480 in support of his argument.

I do not think that any of those rulings are applicable in the present case. In the cases cited by him the prayer to fix rent was made at the stage of second appeal. The question was one of fact and the parties would have to adduce evidence on the point before the Court could come to any conclusion regarding the proper amount of rent payable by the tenant. This could not be permitted at the stage of second appeal. In the present case the plaint was amended in the trial Court itself. Parties had full opportunity to adduce evidence on the proper amount for rent to be fixed by the Court. The Court applied its mind to the evidence and gave a finding thereon. The defendants-appellants themselves did not think it worthwhile raising this point at any previous stage. The procedure adopted by the trial Court cannot be considered to be illegal or unwarranted and the appeal cannot be allowed on

this ground.

14. Having heard the learned counsel for the appellants at great length, I find that there is no substance in this appeal. It is accordingly dismissed with costs.